

03-1274 SWEDENBURG, ET AL. V. KELLY, ET AL.

Decision Below: 358 F.3d 223 (2nd Cir. 2004)

QUESTIONS PRESENTED

1. ~~Does New York's discriminatory and protectionist prohibition against direct interstate shipment of wine to consumers violate the Commerce Clause of the U.S. Constitution; and if so, is it "saved" by the 21st Amendment?~~
2. ~~Does New York's discriminatory and protectionist prohibition against direct interstate shipment of wine to consumers violate the Privileges and Immunities Clause of the U.S. Constitution?~~

03-1116 GRANHOLM, ET AL. V. MICHIGAN BEER AND WINE WHOLESALERS ASS'N, ET AL.

Decision below: 342 F.3d 517 (6th Cir. 2003)

QUESTION PRESENTED

Under state law, the Michigan Liquor Control Commission generally bans out-of-state direct shipment of alcoholic liquor to consumers' doorsteps, but permits in-state licensed wineries to direct ship to consumers, and out-of-state wineries to import through in-state licensed wholesalers. Out-of-state wineries may also petition the State Liquor Control Commission for an order permitting them to ship wine directly to consumers in the State. Any denial of such a request may be appealed through the State court system. Section 2 of the 21st Amendment to the United States Constitution expressly prohibits importation of alcoholic beverages into any state for delivery or use, in violation of the laws of the State. The Court of Appeals declared Michigan's alcoholic liquor importation law facially unconstitutional in violation of the Commerce Clause. The question presented is:

~~Does Michigan's regulation of the importation of beverage alcohol under the 21st Amendment facially violate the Commerce Clause when it permits in-state licensed wineries to directly ship alcohol to consumers, but requires out-of-state wineries to import its products through licensed in-state wholesalers and to sell its products through licensed retailers or request permission of the Liquor Control Commission to bypass this distribution system and ship directly to consumers?~~

03-1120 MICHIGAN BEER & WINE WHOLESALERS ASS'N V. HEALD, ET AL.

Decision Below: 342 F.3d 517 (6th Cir. 2003)

QUESTIONS PRESENTED

Section 2 of the Twenty-first Amendment of the United States Constitution prohibits importation of alcoholic beverages into any state, for delivery or use therein, in violation of the laws thereof. In the Webb-Kenyon Act, 27 U.S.C. § 122, Congress exercised its power under the Commerce Clause to impose essentially the same prohibition by federal statute.

Michigan, like many other states, generally prohibits the importation of alcoholic beverages by any unlicensed person. Michigan law permits licensed in-state wineries to ship wine directly to consumers, but does not, as a matter of right, permit out-of-state wineries (which are not licensed by the state) to do so. An out-of-state entity may locate in Michigan and be licensed as an in-state winery. The Sixth Circuit ruled that the Michigan statute is "facially discriminatory" and struck down the prohibition on importation, allowing Michigan consumers to order and receive wine from out-of-state sources without limitation. The questions presented are:

1. ~~Whether the Sixth Circuit erred in ruling (in conflict with a Seventh Circuit decision upholding a similar Indiana statute against the same challenge) that the Twenty-first Amendment and the Webb-Kenyon Act do not authorize Michigan to enact statutes that prohibit the importation of alcoholic beverages by unlicensed persons, and that the Commerce Clause bars such statutes.~~
2. ~~Whether the Sixth Circuit erred in ruling (in conflict with a Fourth Circuit decision with respect to a similar North Carolina statute) that the proper remedy for the alleged discrimination was to invalidate the state's control over importation of alcoholic beverages rather than merely strike the offending exception for in-state wineries.~~

Certiorari Granted 5/24/04

Consolidated for 1 hour of oral argument

Limited to the following question:

Does a State's regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Sec. 2 of the 21st Amendment?